AUG 31 2001

No. 00-1089

IN THE

Supreme Court of the United States

TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC.,
Petitioner,

v.

ELLA WILLIAMS,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR THE JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW *ET AL.* AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

(Additional *Amici* Listed on Inside Cover)

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The American Diabetes Association

The American Occupational Therapy Association ("AOTA")

The Arc of the United States

The Association on Higher Education And Disability ("AHEAD")

The Epilepsy Foundation®

HalfthePlanet Foundation

The Judge David L. Bazelon Center for Mental Health Law

Lambda Legal Defense and Education Fund, Inc.

The National Association of Protection and Advocacy Systems ("NAPAS")

The National Association of Rights Protection and Advocacy ("NARPA")

The National Health Law Program ("NHeLP")

The National Mental Health Association

The National Mental Health Consumers' Self-Help Clearinghouse

The Polio Society

Self Help for Hard of Hearing People

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INTEREST OF THE AMICI CURIAE

The sixteen organizations joining this brief have worked for years on behalf of persons with disabilities and have brought, supported, or participated in numerous lawsuits on behalf of such persons. They all have strong institutional interests in the correct interpretation of the Americans with Disabilities Act and in vindicating the principles of equality and fair opportunity embodied in that Act. Their interests are described in more detail in the Appendix to this brief.

[1] No counsel for any party had any role in authoring this brief, and no persons other than the *amici curiae* and their counsel made any monetary contribution to its preparation or submission. Written consents from the parties to the filing of this brief are on file with the Clerk of the Court.

INTRODUCTION

This case concerns the proper interpretation of the term "disability" as that term is used in the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101 *et seq*. In particular, it involves the proper interpretation of what it means for an individual's physical or mental impairment to "substantially limit[] one or more of the major life activities of such individual" within the meaning of § 12102(2)(A), and what it means for such impairment to "substantially limit" the major life activities of "performing manual tasks" and "working" within the meaning of the EEOC regulations concerning Title I of the ADA, 29 C.F.R. § 1630.2(i) and (j).

Respondent Ella Williams began employment in 1990 as an assembly line worker in an automobile manufacturing plant operated by Petitioner Toyota Motor Manufacturing, Kentucky, Inc. As more fully explained in the briefs of the parties, she developed bilateral carpal tunnel syndrome in her wrists and bilateral tendinitis in her neck, shoulders, and arms, apparently as a result of having to grip vibrating pneumatic tools to perform her job, and consulted a physician who imposed certain limitations on her manual activities. The resulting limitations apparently disqualified her from most of the assembly jobs in the plant, and Toyota eventually accommodated her by assigning her to the unit of the assembly line known for having "the 'easiest jobs' at [the plant]," Pet. Br. 5, where Ms. Williams, in a further accommodation, rotated each week between the two least physically taxing work stations. After three years, Toyota required her to rotate to a third job station, where she was required to apply oil to portions of the cars on the assembly line, using a wooden-handled sponge, and to work at regular intervals with her hands and arms above shoulder height. Ms. Williams believed that she could continue to work if her rotation was limited to the two jobs she had been performing for the past three years. The matter was not resolved to her satisfaction, however, and her employment ended soon after. Ms. Williams's

condition also limited her outside of work. While this matter is dealt with more fully in the briefs of the parties, Ms. Williams gave several examples of such limitations in her deposition testimony, including the following: "Raising my arms and sometimes getting dressed, I can't reach my arms like I need to anymore," and "I try to avoid any driving due to driving causes me pain." J.A. 32, 33.

When Ms. Williams sued Toyota under Title I of the ADA, the district court granted Toyota's motion for summary judgment. With respect to the major life activity of performing manual tasks, the court found Ms. Williams's evidence of substantial limitations insufficient, stating specifically that her claim was "irretrievably contradicted by [her] continual insistence that she could perform the tasks in assembly and paint inspection without difficulty; positions requiring manual tasks." Pet. App. 36a. With respect to the major life activity of working, the court found dispositive the well-established principle that to be considered substantially limited in that major life activity, an ADA plaintiff "must show more than an inability to perform a single job or the job of her choice." Pet. App. 37a. The court did not think Ms. Williams had done so, in spite of her conceded inability to perform any of the assembly line jobs in the plant other than the two easiest jobs in the easiest division.

The court of appeals reversed, addressing only the major life activity of performing manual tasks. The grounds for its decision are, to put it bluntly, not clearly stated. In light of the contentious view of this decision taken by Toyota, it is useful to describe the decision in some detail.

The court first concluded, "from the language of the Act, the EEOC's interpretation and the Supreme Court's analysis in *Sutton* [v. *United Air Lines, Inc.*, 527 U.S. 471 (1999)]," that "in order to be disabled the plaintiff must show that her manual disability involves a 'class' of manual activities affecting the

ability to perform tasks at work." 224 F.3d 840, 843 (6th Cir. 2000), Pet. App. 4a. Petitioner makes much of this statement, contending that the court intended in this statement to encapsulate or define the entire test for determining if one is substantially limited in the major life activity of performing manual tasks. *E.g.*, Pet. Br. 15-16. In our view, the sentence is of an introductory nature and does not bear the weight Petitioner places upon it. To the contrary, the heart of the court's analysis is found in the next paragraph of the opinion, where the court stated that, "taking the evidence in the light most favorable to the plaintiff, * * * [h]er ailments are analogous to having missing, damaged or deformed limbs that prevent her from doing the tasks associated with certain types of manual assembly line jobs, manual product handling jobs and manual building trade jobs (painting, plumbing, roofing, etc.) that require the gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time." 224 F.3d at 843, Pet. App. 4a. It found these limitations to meet the statutory test, even though "Williams can perform a range of isolated, non-repetitive manual tasks performed over a short period of time, such as tending to her personal hygiene or carrying out personal or household chores." *Id.*

The court did not determine whether Ms. Williams was substantially limited in the major life activities of lifting or working, because it had already concluded that Ms. Williams was substantially limited in performing manual tasks—requiring a remand to the district court for further proceedings. Moreover, the court took the occasion to distinguish another Sixth Circuit decision—*McKay* v. *Toyota Motor Mfg., U.S.A., Inc.*, 110 F.3d 369 (6th Cir. 1997) (concerning the major life activity of "working")—on the ground that *McKay* had failed to take account of *Sutton*'s "recogni[tion]" that "'there may be some conceptual difficulty in defining 'major life activities' to include work, for it seems to argue in a circle to say that if one

is excluded, for instance, by reason of [an impairment, from working with others] . . . then that exclusion constitutes an impairment, when the question you're asking is, whether the exclusion itself is by reason of handicap.'" 224 F.3d at 843, Pet. App. 5a, quoting *Sutton*, 527 U.S. at 492 (brackets and ellipsis in original). The court repeated in the next paragraph that the "'difficult concept' of working" is properly viewed as a "'last resort.'" 224 F.3d at 844, Pet. App. 5a. "The concept of 'manual tasks' requires a disability analysis to come before the life activity of working is considered and includes looking at a person's ability to use their limbs in a way called for by *a broad range or class of manual activities* that, as in this case, require the gripping of tools and arms to be kept overhead or at shoulder level repetitively for an extended period of time." 224 F.3d at 844, Pet. App. 5a–6a (emphasis added).

The court described Ms. Williams's claim as including "the rather simple concept that she is disabled as to performing manual tasks because she suffers from a severe impairment to her limbs, shoulders and neck that seriously reduces her ability to perform the manual tasks that are job-related." 224 F.3d at 844, Pet. App. 5a. And the court concluded that her impairments of limbs were "sufficiently severe to be like deformed limbs and such activities affect manual tasks associated with working, as well as manual tasks associated with recreation, household chores and living generally." 224 F.3d at 844, Pet. App. 6a. In its view, this limitation met the test of the EEOC regulation, 29 C.F.R. § 1630.2(j)(1)(ii).

Accordingly, it appears reasonably clear that the court concluded that Ms. Williams's inability in "gripping of tools and [holding her] arms * * * overhead or at shoulder level repetitively for an extended period of time" meant that she was significantly limited in a "broad range or class of manual activities" and thus came within the EEOC regulation and the Act. And because the court returned more than once to the observation that Ms. Williams's impairment was like having

"missing, damaged or deformed limbs," the court clearly was not ruling for Ms. Williams either because her impairment merely "affected" her ability to work or because her impairment kept her from performing only one job or one narrow set of jobs.

SUMMARY OF ARGUMENT

While the *amici* joining this brief generally support the positions of Respondent, Ms. Williams, this brief addresses four issues raised by the case that are of general importance to the disability community.

First, *amici* take issue with the Sixth Circuit's statement that "in order to be disabled the plaintiff must show that her manual disability involves a 'class' of manual activities affecting the ability to perform tasks *at work*." 224 F.3d at 843, Pet. App. 4a (emphasis added). Neither the language of the statute nor the EEOC regulations—which are not challenged in this case—point to such a limitation in addressing any major life activity other than working. While this limitation may not prejudice Ms. Williams here, it will prejudice other ADA plaintiffs and should be corrected.

Second, *amici* take issue with the very limited notion of the major life activity of "performing manual tasks" that Petitioner urges. For an individual to be "disabled" under the ADA with respect to the major life activity of performing manual tasks, he or she must be "substantially limit[ed]" in the performance of manual tasks as compared to the average person in the general population. 29 C.F.R. § 1630.2(j)(1), Pet. Br. 18a–19a. Petitioner, however, seeks to impose a much higher standard, requiring ADA plaintiffs to demonstrate that they are "*severely restricted* from using their hands to perform a *broad range* of *basic functions* needed to meet the *essential demands of everyday life*." Pet. Br. 12–13 (emphasis added). That higher standard is not grounded in the ADA, the EEOC regulations, or the interpretive guidance, and should therefore be rejected. The

ADA requires consideration of *all* manual tasks that the average person can perform, including both tasks performed at work and outside of work. In addition, and contrary to Petitioner's claim, consideration of manual tasks performed solely at work does not circumvent the requirements of the different major life activity of "working." Although the major life activities of "performing manual tasks" and "working" sometimes overlap in scope, they are two separate major life activities, which protect individuals with different impairments. Under these standards, the Sixth Circuit correctly concluded that a reasonable jury could find that Ms. Williams was substantially limited in the major life activity of performing manual tasks.

Third, *amici* ask the Court to revisit the passage in *Sutton* that apparently discouraged the Sixth Circuit from addressing the major life activity of "working" and has given pause as well to a number of other lower courts. This is the passage in which the Court mentioned certain "conceptual difficult[ies]" with the major life activity of "working" and suggested that it may be "circular" to define "working" as a major life activity. 527 U.S. at 492. To the contrary, there is no general conceptual difficulty with defining "working" as a major life activity. The EEOC regulations clarify the definition in a manner that eliminates any perceived circularity. Moreover, it would defy common sense to say that an individual whose physical or mental impairment makes it difficult to find employment is not significantly limited in a "major life activity." The protection provided by the major life activity of working is an important one for individuals with disabilities and is clearly within the language and purpose of the ADA.

Finally, *amici* urge the Court not to accept the invitation of Petitioner and some *amici* to limit the definition of "disability" in order to spare employers the perceived burdens of defending against ADA Title I claims on the additional grounds that the accommodations that would be necessary to qualify the individual for the job are unreasonable or would impose an

undue hardship. Contrary to the claim of one *amici* and certain commentators, such issues are indeed amenable to disposition on summary judgment. In any event, the perceived burdens of winning ADA cases on those additional grounds is an insufficient reason to conclude that Congress adopted the very limited reading of "disability" urged by Petitioner and its *amici*. Congress manifestly had a broader view of the term.

ARGUMENT

I. An ADA Plaintiff Should Not Be Required To Show That Her Manual Disability Affects Her Ability To Perform Tasks at Work.

The Sixth Circuit introduced its discussion of Ms. Williams's claim that she was significantly limited in the major life activity of performing manual tasks by saying that "in order to be disabled the plaintiff must show that her manual disability involves a 'class' of manual activities affecting the ability to perform tasks at work." 224 F.3d at 843, Pet. App. 4a. As explained in the Introduction, *amici* doubt that this statement was meant to set forth a complete statement of the Sixth Circuit's understanding of the test for evaluating limitations on performing manual tasks. But to the extent that the Sixth Circuit intended to say that the evaluation must focus exclusively on work-related manual tasks, *amici* agree with the United States that the Sixth Circuit applied the wrong standard. See Brief for the United States as *Amicus Curiae* at 17–21.

The ADA defines a "disability" with respect to an individual as "a physical or mental impairment that substantially limits one or more of the major life activities of such individual." 42 U.S.C. § 12102(2). There is no way to read these words as limiting the inquiry to whether individuals are impaired in their ability to perform tasks at work.

The EEOC regulations—which are not challenged in this proceeding—define "major life activities" as "functions such as

caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1630.2(i), Pet. Br. 18a. Because "working" is defined as a separate major life activity, it makes no sense to confine any of the other major life activities to a subset of working activities. Moreover, in defining the term "substantially limits," the EEOC regulations, which we discuss more fully below, do not instruct courts to look only at work-related activities. 29 C.F.R. § 1630.2(j)(1), Pet. Br. 18a–19a.

There is, of course, substantial overlap among the various major life activities that the EEOC listed. For example, blindness both impairs an individual's ability to do many non-work-related activities that others do without difficulty and affects the individual's ability to perform many different jobs. There is nothing in the EEOC regulations or in common sense, however, that leads to the conclusion that individuals must show that they are significantly limited in the ability to work to show that they are significantly limited in the other listed major life activities. Nor is "performing manual tasks" peculiar in this respect. As we explain more fully below, performing manual tasks is a major life activity in its own right. While it may substantially overlap with "working," it refers to limitations on manual activities outside of work as well as those one might perform at a job.

This Court has already rejected the contention that individuals must establish that their limitations "have a public or economic character" in order to establish that they are substantially limited in a major life activity. In *Bragdon* v. *Abbott*, 524 U.S. 624 (1998), where it held that reproduction is a major life activity, this Court stated: "The inclusion of activities such as caring for one's self and *performing manual tasks* belies the suggestion that a task must have a public or economic character in order to be a major life activity for purposes of the ADA." 524 U.S. at 639 (emphasis added).

In short, as the United States stated in its brief:

> "With the obvious exception of 'working,' proof that an individual is substantially limited in one of the major life activities identified in the regulations does not require a showing that his impairment affects job performance. In particular, an individual whose impairment substantially limits his ability to perform manual tasks has a 'disability' within the meaning of the ADA, even if the tasks that the individual is unable to perform all occur off the job and the impairment does not affect his 'ability to perform tasks at work.'" Brief for the United States as *Amicus Curiae* at 18–19.

Because the Sixth Circuit's apparent error on this point did not prejudice Ms. Williams, who prevailed anyway, there is no reason to remand the case because of this error. The point is sufficiently important, however, to deserve correction by this Court.

II. An Individual Is Disabled Under the ADA When That Individual Is Able To Perform Manual Tasks Only at a Level Substantially Below the Level at Which the Average Person in the General Population Can Perform Such Tasks.

A. To determine whether an individual is disabled under the ADA, a court must determine whether that individual is substantially limited in the performance of a major life activity when compared to the ability of the average person in the general population to perform that major life activity. According to the EEOC regulations—which are not challenged in this proceeding—a person is "substantially limit[ed]" in the performance of a major life activity if he or she is:

> "(i) Unable to perform a major life activity that the *average person in the general population* can perform; or

> (ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity *as compared to* the condition, manner, or duration under which *the average person in the general population* can perform that same major life activity." 29 C.F.R. § 1630.2(j)(1), Pet. Br. 18a–19a (emphasis added).[2]

This comparison of an ADA plaintiff with the average person in the general population is buttressed by the requirement that courts determine whether a plaintiff is "disabled" under the ADA on an individualized, rather than a categorical, basis. See *Sutton* v. *United Air Lines, Inc.*, 527 U.S. 471, 483 (1999) ("[W]hether a person has a disability under the ADA is an individualized inquiry."). Therefore, courts must determine whether a particular ADA plaintiff is "substantially limit[ed]" in the major life activity of "performing manual tasks" by inquiring whether *that plaintiff* is restricted in the performance of manual

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[2] See also 29 C.F.R. pt. 1630 App. § 1630.2(i), Pet. Br. 31a (a major life activity is an activity "that the *average person in the general population* can perform with little or no difficulty"); *id.* § 1630.2(j), Pet. Br. 33a ("[A]n impairment is substantially limiting if it significantly restricts the duration, manner or condition under which an individual can perform a particular major life activity *as compared to the average person in the general population's* ability to perform that same major life activity."); *id.*, Pet. Br. 34a ("An individual is not substantially limited in a major life activity if the limitation * * * does not amount to a significant restriction *when compared with the abilities of the average person.*") (all emphasis added). This notion comes directly from the reports on the bills that became the ADA. S. Rep. No. 101-116, at 23 (1989) ("A person is considered an individual with a disability for purposes of the first prong of the definition when the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people."); H.R. Rep. No. 101-485, pt. 2, at 52 (1990) (same).

tasks to a level substantially below that at which the average person in the general population can perform such tasks.[3]

Toyota seeks to modify this inquiry and to require ADA plaintiffs to demonstrate that, with respect to the major life activity of performing manual tasks, they are "*severely restricted* from using their hands to perform a *broad range* of *basic functions* needed to meet the *essential demands of everyday life*." Pet. Br. 12–13 (emphasis added). There is simply no support, however, in the text of the ADA, the EEOC regulations, or the interpretive guidance for imposing this different standard. Toyota has crafted this hurdle out of whole cloth. As discussed above, an individual is disabled under the ADA when he or she is significantly restricted in the performance of a major life activity—including the major life activity of performing manual tasks—as compared to the average person in the general population, even if such impairment does not rise to the level that Toyota seeks to impose.[4]

[3] An example of this individualized decision-making is the Eleventh Circuit's decision in *Chanda* v. *Engelhard/ICC*, 234 F.3d 1219 (11th Cir. 2000). In *Chanda*, the court found an individual not disabled under the ADA because, although tendinitis in his forearms rendered him unable to perform certain manual tasks (such as typing or cutting foamboard), in the court's view that condition did not substantially limit his ability to perform manual tasks. *Id.* at 1223. The court specifically distinguished the facts of that case from the Sixth Circuit's decision in this case, "recognizing the case-by-case nature of the disability," and concluding that the limitations at issue in that case resulted in a lesser level of impairment than Ms. Williams's condition, which impacted her wrists, arms, shoulders, and neck. *Id.* at 1224.

[4] Lower federal courts have adopted this comparison, and not Toyota's proposed standard, as the relevant inquiry. *See, e.g.*, *Maziarka* v. *Mills Fleet Farm, Inc.*, 245 F.3d 675, 680 (8th Cir. 2001) (severe irritable bowel syndrome limited major life activities, including performance of manual tasks, when compared to the average person); *Emerson* v. *Northern States Power Co.*, No. 00-3746, 2001 U.S. App. LEXIS 14252, at *12–13 (7th Cir. June 26, 2001) (fact issue sufficient to defeat summary judgment concerning whether individual's learning difficulties substantially limited that plaintiff as compared to the average person in the general population).

Toyota also mistakenly argues that an ADA plaintiff's ability to perform a range of manual tasks means that he or she cannot be "substantially limit[ed]" in the major life activity of performing manual tasks. See Pet. Br. 3 (even though Ms. Williams was substantially limited in the performance of a "range of manual tasks associated with an assembly line job," she "could perform almost all other manual tasks"). This method of analysis, however, turns the ADA on its head. The ADA is concerned with an individual's *disabilities*, not his or her *abilities*—of which every disabled individual undoubtedly has many.[5] This distinction is critically important with respect to the major life activity of performing manual tasks because, unlike other major life activities, such as seeing or hearing, the major life activity of performing manual tasks includes many different functions. The ability to perform certain manual tasks does not negate the existence of a disability under the ADA, so long as the individual can perform manual tasks only at a level substantially below the level at which the average person in the general population can perform manual tasks.

B. There is no basis in the statute or regulations for excluding from consideration any manual task that the average person in the general population can perform when determining whether an individual is substantially limited in the major life activity of performing manual tasks. Toyota acknowledges that the ability to perform manual tasks is an important life function when it states that "[t]he reason 'performing manual tasks' is a major life activity is that the ability to use one's hands to

[5] *E.g.*, *EEOC* v. *Sears, Roebuck & Co.*, 233 F.3d 432, 435, 438 (7th Cir. 2000) (rational jury could conclude that individual who could walk short distances for short periods of time was nonetheless substantially limited in the major life activity of walking).

accomplish basic functions is an undeniably important and significant aspect of life." Pet. Br. 14. Toyota errs, though, by extrapolating to the conclusion that only manual tasks that are at "the heart of what makes the ability to perform manual tasks a major life activity" are relevant to the "disability" inquiry under the ADA. *Id.* This conclusion is unsupportable.

The EEOC regulations do not establish that there are relevant and irrelevant manual tasks or distinguish between core and non-core manual tasks. Under the ADA's standard of comparison, all manual tasks that the average person in the general population can perform without significant difficulty are relevant in determining whether an individual is disabled under the ADA. Those manual tasks that the average person cannot perform (*e.g.*, playing the piano at the level of a concert pianist) are obviously excluded from consideration.

It is also clear that there is no basis for categorically excluding manual tasks performed solely at work from consideration when determining whether an individual is substantially limited in the major life activity of performing manual tasks. See Brief for the United States as *Amicus Curiae* at 21 ("[A] proper determination whether a plaintiff is substantially limited in 'performing manual tasks' would include an assessment of his ability (or inability) to perform manual tasks outside the workplace as well as those on the job."). Obviously, many jobs require individuals to perform manual tasks, and the EEOC regulations do not distinguish between work-related manual tasks and non-work manual tasks for purposes of coverage under the ADA.[6] Moreover, it would be

[6] Even those courts that have found particular plaintiffs not disabled under the ADA have considered work-related manual tasks relevant to determine whether an individual is substantially limited in the performance of manual tasks. *E.g.*, *Shpargel* v. *Stage & Co.*, 914 F. Supp. 1468, 1474 (E.D. Mich. 1996) (plaintiff who could perform manual tasks at work held not disabled under the ADA); *Battle* v. *Power Logistics*, No. 99 C 5872,

an artificial distinction to require that to be limited in the major life activity of performing manual tasks, one must demonstrate limitation in some manual task or tasks outside of work, in addition to manual tasks at work (regardless of how many or how significant they are). The more natural interpretation, and one that is consistent with the regulations, is that all manual tasks are relevant to the basic inquiry, and any individual who is significantly limited in the performance of such tasks as compared to the average person in the general population is disabled with respect to the major life activity of performing manual tasks.

Toyota attempts to avoid this natural conclusion by arguing that the ADA extends to impairments that limit a major life activity, not impairments that merely limit a "subset" of a major life activity—in this case the major life activity of performing manual tasks. Pet. Br. 12, 16. This argument begs the question: at what point does an individual's substantial impairment in the performance of a few manual tasks rise to the level of impairing the general category of "performing manual tasks" as compared to the average person in the general population? The answer is that one who is able to perform manual tasks only at a level substantially below the level at which an average person can perform such tasks is disabled under the ADA. That inquiry may pose challenging factual questions when an individual is limited in only some manual tasks, but that challenge is analytically similar to the challenge in assessing a partial limitation with respect to any major life activity. In any event, whether the limitation applies to a "subset" or not does not advance the inquiry.

2000 U.S. Dist. LEXIS 16872, at *17 (N.D. Ill. Nov. 1, 2000) (same); *Puoci* v. *City of Chicago*, 81 F. Supp. 2d 893, 897 (N.D. Ill. 2000) (individual who could perform his job, which included performing manual tasks, not disabled).

C. Recognizing that an individual may be disabled because he or she is limited in the performance of manual tasks solely at work does not circumvent or render irrelevant the major life activity of "working." Toyota argues (at 19–21) that finding an individual disabled under the ADA solely on the basis of limitations on work-related manual tasks would "make[] an end-run" around the requirement that, with respect to the major life activity of "working," an individual must be "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes." 29 C.F.R. § 1630.2(j)(3)(i), Pet. Br. 19a. At its most basic, this argument ignores the fact that "performing manual tasks" and "working" are two separate major life activities, as specified by the EEOC regulations. See 29 C.F.R. § 1630.2(i), Pet. Br. 18a. There is no basis for restricting the scope of one major life activity simply because of the construction that has been given to another major life activity.

Moreover, Toyota's argument ignores the very real distinction between being disabled by being substantially limited in working and being disabled by being substantially limited in the performance of manual tasks. Some people may be limited in performing manual tasks (whether at work, outside of work, or both), but not limited in working—such as those whose jobs do not require significant performance of manual tasks (*e.g.*, a singer, an educator, or a lawyer). Other disabled individuals, however, may be substantially limited in working, but not in performing manual tasks (*e.g.*, a person with severe mental retardation). Therefore, even if the major life activity of performing manual tasks permits an individual to be deemed disabled under the ADA because the individual is significantly limited in performing the manual tasks required by the kind of job he or she holds, this construction does not compromise the standards for being substantially limited in the different major life activity of working. Moreover, while the major life activities of performing manual tasks and working might in some cases

overlap in scope—as do other major life activities such as seeing and walking, or learning and working—the basic inquiry remains the same: whether the individual can perform manual tasks at a level substantially equivalent to the level at which the average person in the general population can perform manual tasks.

D. While the application of ADA rules to Ms. Williams's case is fully developed in the briefs of the parties, several considerations point to the conclusion that the court of appeals correctly held that a reasonable jury could conclude that when compared to the average person in the general population, Ms. Williams was "substantially limited" in the major life activity of performing manual tasks. Three factors used to assist in the determination of whether an individual is "substantially limited" in a major life activity (as compared to the average person) are "(i) The nature and severity of the impairment; (ii) The duration or expected duration of the impairment; and (iii) The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment." 29 C.F.R. § 1630.2(j)(2), Pet. Br. 19a; *cf.* 29 C.F.R. pt. 1630 App. § 1630.2(j), Pet. Br. 32a ("temporary, non-chronic impairments of short duration, with little or no long term or permanent impact, are usually not disabilities" including "broken limbs, sprained joints, concussions, appendicitis, and influenza"). Ms. Williams suffered from carpal tunnel syndrome and from tendinitis in her hands, arms, shoulders, and neck. Pet. App. 2a (court of appeals opinion). The court evaluated the effect of this condition on Ms. Williams when it found her condition to be "severe," and classified it as "analogous to having missing, damaged or deformed limbs." Pet. App. 2a, 4a.[7] Not only did Ms. Williams's condition substantially limit her in the

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[7] See 29 C.F.R. pt. 1630 App. § 1630.2(j), Pet. Br. 32a ("The determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual.").

performance of manual tasks at work—including "gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time," Pet. App. 4a, but the record evidence indicates that she was also limited in the performance of manual tasks outside of work, including dressing, driving, performing household chores (such as vacuuming), and gardening. J.A. 32, 35–36, and 39.[8] Further, Ms. Williams's condition was lengthy in duration—she developed carpal tunnel syndrome in 1991, J.A. 11, and by December 6, 1996, Ms. Williams's last day of work with Toyota, her condition had become so severe that "she was placed under a *no work of any kind* restriction by several of her treating physicians." Pet. App. 28a (district court opinion).[9] The court of appeals therefore correctly held that a reasonable jury could conclude that Ms. Williams was substantially limited in the major life activity of performing manual tasks.

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[8] Toyota notes that the district court rejected Ms. Williams's claims that these activities were "major life activities." Pet. Br. 7 n.2. But the District Court did not hold that these activities were not "manual tasks" or that Ms. Williams's condition did not in fact limit her performance of these manual tasks.

[9] The duration of Ms. Williams's carpal tunnel syndrome and tendinitis places her condition squarely within the holdings of the lower federal courts on this issue. *Compare Quint* v. *A.E. Staley Mfg. Co.*, 172 F.3d 1, 11 (1st Cir. 1999) (plaintiff substantially limited in working because her carpal tunnel syndrome was "recurrent and permanent"), *and Wellington* v. *Lyon County Sch. Dist.*, 187 F.3d 1150, 1155 (9th Cir. 1999) (permanent carpal tunnel syndrome sufficient to create question of fact concerning substantial limitation on working), *with Battle* v. *Power Logistics*, No. 99 C 5872, 2000 U.S. Dist. LEXIS 16872, at *16 (N.D. Ill. Nov. 1, 2000) (wrist injury expected to last 2 to 4 weeks not substantially limiting), *and Wilmarth* v. *City of Santa Rosa*, 945 F. Supp. 1271, 1276 (N.D. Cal. 1996) (temporary carpal tunnel syndrome held not disabling).

III. There Is No General Conceptual Difficulty in Treating "Working" As a "Major Life Activity."

A. In explaining why it chose not to address Ms. Williams's argument that she was substantially limited in the major life activity of working, the court of appeals relied on a passage from *Sutton* to the effect that there may be "conceptual difficult[ies]" in defining "major life activities" to include work. 224 F.3d at 843, Pet. App. 5a. In the passage in question, the Court in *Sutton* began by observing that, because the parties in that case accepted "that the term 'major life activities' includes working," it would not "determine the validity" of the EEOC regulation that specifically includes "working" in the list of "major life activities." 527 U.S. at 492, referring to 29 C.F.R. § 1630.2(i), Pet. Br. 18a. It then continued:

> "We note, however, that there may be some conceptual difficulty in defining 'major life activities' to include work, for it seems 'to argue in a circle to say that if one is excluded, for instance, by reason of [an impairment, from working with others] . . . then that exclusion constitutes an impairment, when the question you're asking is, whether the exclusion itself is by reason of handicap.' Tr. of Oral Arg. in *School Bd. of Nassau Co.* v. *Arline*, O.T. 1986, No. 85-1277, p. 15 (argument of Solicitor General)." *Sutton*, 527 U.S. at 492 (brackets and ellipsis in original).

The Court went on to suggest that the EEOC shared its concern about categorizing "working" as a "major life activity," adding:

> "Indeed, even the EEOC has expressed reluctance to define 'major life activities' to include working and has suggested that working be viewed as a residual life activity, considered, as a last resort, *only* '[i]f an individual is not substantially limited with respect to *any other* major life activity.' 29 CFR pt. 1630, App. § 1630.2(j) (1998) (emphasis added) ('If an individual is

substantially limited in *any other* major life activity, no determination should be made as to whether the individual is substantially limited in working' (emphasis added))." 527 U.S. at 492.

The disability groups joining this *amicus* brief are concerned that this passage will discourage lower courts from addressing the major life activity of "working" at all (as it did the Sixth Circuit) or will encourage them to limit the cases in which they find that an impairment substantially limits the major life activity of "working" in ways not justified by the text of the ADA, the language of the regulations and guidance documents, and the manifest purposes of the ADA. Accordingly, we urge the Court to clarify what it meant by this passage or modify the passage and thereby eliminate the suggestion that there is a general "conceptual difficulty" involved in identifying "working" as a major life activity for purposes of identifying which individuals are "disabled" under the ADA.

Dispelling the notion of a "conceptual difficulty" begins with placing *Sutton*'s quotation from the former Solicitor General's oral argument in *Arline* in the context of that case. The issue in *Arline* was whether an elementary school teacher fired for having contagious tuberculosis had a claim under § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794—that is, whether she was "handicapped," was "otherwise qualified," and had been discharged "solely by reason of [her] handicap." *School Bd. of Nassau County* v. *Arline*, 480 U.S. 273, 278–79 (1987). In the passage in question, the Solicitor General was not questioning whether "working" was a "major life activity" for purposes of § 504. The question to which the Solicitor General responded was the following: "Is employment a major life activity? Or association with other people?" Tr. of Oral Arg. in *School Bd. of Nassau County* v. *Arline*, O.T. 1986, No. 85-1277, p. 15. He answered, without equivocation, "Those are all major life activities." *Id.* He then continued, in the passage partially quoted by the Court:

"But it would be to argue in a circle to say that if one is excluded, for instance, by reason of contagiousness, from associating with others, then that exclusion constitutes an impairment, when the question you're asking is, whether the exclusion itself is by reason of handicap.

"That's a totally circular argument which lifts itself by its bootstraps. The impairment has got to be in respect to an activity which is defined and considered apart from the exclusionary action which is the subject of the lawsuit, of the complaint." *Id.* at 15-16.

Although it is difficult to make precise sense of a statement in the give-and-take of oral argument, the Solicitor General appears to have been saying no more than the following: it would be circular to say that, because one has been excluded from a single job on the basis of some characteristic (here contagiousness), this characteristic is a "handicap" for that reason alone. Or, in the language of the ADA, it would be circular to say that, because one has been excluded from a job on the basis of some physical impairment, one is "substantially limit[ed]" in the major life activity of "working" for that reason alone.

Even if such an argument would be circular, it is not one that the ADA permits or contemplates.[10] As an initial matter, it is difficult to imagine that anyone would think that exclusion from a particular job automatically means that one is "substantially

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[10] We note that the unanimous Court in *Arline* rejected the Solicitor General's "circularity" argument, stating that "[t]he argument is not circular, however, but direct." 480 U.S. at 283 n.10. As the Court explained, "Congress plainly intended the [Rehabilitation] Act to cover persons with a physical or mental impairment (whether actual, past, or perceived) that substantially limited one's ability to work." *Id.* We do not dwell further on Section 504, because, in our view, the language of the ADA and the EEOC regulations and guidance so clearly dispose of the point in the ADA context.

limit[ed]" in the major life activity of "working." The words do not readily lend themselves to that interpretation. If there were any doubt, the EEOC regulations make the point clear. "The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working." 29 C.F.R. § 1630.2(j)(3)(i), Pet. Br. 19a.

The EEOC regulations further elaborate on and explain this point by saying that one's physical impairment "substantially limits" one in the major life activity of "working" if it significantly restricts one "in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities." *Id.* The intention of the regulations is to distinguish between "a class of jobs or a broad range of jobs in various classes" and "a single, particular job." And the clear implication is that if there are a number of jobs that a plaintiff cannot perform—either a group of jobs that, in a common sense way, are viewed as a "class of jobs" or "a broad range of jobs" in different classes—the regulations then direct the court to the next question: can "the average person having comparable training, skills and abilities" perform those jobs? If so, then the plaintiff is "disabled" within the meaning of the ADA.[11]

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[11] Similarly, one may be terminated from a particular job because one has a condition that, because of an employer's uninformed or stereotyped view, is erroneously regarded by that employer as being of such a nature that it prevents one from performing a wide range of jobs. If so, one is "regarded as" having a disability under § 12102(2)(C), the "third prong" of the ADA definition of "disability." See 29 C.F.R. § 1630.2(*l*) and pt. 1630 App. § 1630.2(*l*). In neither case does termination from a particular job alone show that one comes within the definition of "disability," so there is no circularity. But in each case, the facts surrounding the particular termination may demonstrate that one is disabled or regarded as disabled within the meaning of the ADA.

Indeed, the EEOC's Interpretative Guidance provides considerable help in distinguishing between a "class of jobs" and "a single, particular job." It says:

> "Thus, an individual is not substantially limited in working just because he or she is unable to perform a particular job for one employer, or because he or she is unable to perform a specialized job or profession requiring extraordinary skill, prowess or talent. For example, an individual who cannot be a commercial airline pilot because of a minor vision impairment, but who can be a commercial airline co-pilot or a pilot for a courier service, would not be substantially limited in the major life activity of working." 29 C.F.R. pt. 1630 App. § 1630.2(j), Pet. Br. 35a.

This passage was relied upon by the Court in *Sutton* as supporting the conclusion that "the position of global airline pilot is a single job." 527 U.S. at 493. The Interpretive Guidance continues:

> "Nor would a professional baseball pitcher who develops a bad elbow and can no longer throw a baseball be considered substantially limited in the major life activity of working. In both of these examples, the individuals * * * are only unable to perform either a particular specialized job or a narrow range of jobs." 29 C.F.R. pt.1630 App. § 1630.2(j), Pet. Br. 35a–36a.

And later:

> "For example, an individual who has a back condition that prevents the individual form performing any heavy labor job would be substantially limited in the major life activity of working because the individual's impairment eliminates his or her ability to perform *a class of jobs*. This would be so even if the individual were able to perform jobs in another class, e.g., *the class of semi-skilled jobs*." 29

C.F.R. pt. 1630 App. § 1630.2(j) (emphasis added), Pet. Br. 36a.

By contrast, an individual who "has an allergy to a substance found in most high rise office buildings, but seldom found elsewhere" may not be unable to perform a "class of jobs" but would be substantially limited in the ability to perform "the broad range of jobs in various classes that are conducted in high rise office buildings within the geographical area to which he or she has reasonable access" and thus be "disabled" within the meaning of the Act. *Id.*

This Court provided further clarification in this area when it ruled, in *Murphy* v. *United Parcel Service*, 527 U.S. 516, 524–25 (1999), that the inability "to perform the job of mechanic only when that job requires driving a commercial motor vehicle," when the individual is otherwise and "generally" employable as a mechanic, does not mean that the individual is "unable to perform a class of jobs."

In short, the "circular argument" that the Solicitor General feared in *Arline* is precluded by the plain words of the ADA and the EEOC regulations and by this Court's decisions in *Sutton* and *Murphy*. As stated above, neither Toyota nor the United States challenge the EEOC regulations or the EEOC Interpretative Guidance. Nor do they seek reconsideration of *Sutton* and *Murphy*.

The EEOC regulations and Interpretative Guidance also belie any notion that the EEOC was "reluctant" to define "working" as a major life activity. The Court in *Sutton* found evidence of such "reluctance" in the following statement in the EEOC Interpretative Guidance: "If an individual is substantially limited in any other major life activity, no determination should be made as to whether the individual is substantially limited in working." 29 C.F.R. pt. 1630 App. § 1630.2(j), Pet. Br. 34a. In the very next sentence, however, the EEOC explains: "For example, if an individual is blind, i.e., substantially limited in the

major life activity of seeing, there is *no need to* determine whether the individual is also substantially limited in the major life activity of working." *Id.* (emphasis added). This explanation better captures the obvious point that the EEOC apparently found it necessary to emphasize, that it may be simpler and entirely sufficient for a court to find an individual significantly limited in some other major life activity and not address working. We doubt that the EEOC intended to deter lower courts from making the practical determination they routinely make when faced with alternative arguments: whether to address only the issue or issues necessary to support a judgment, or to address a wider range of issues in the interests of judicial efficiency, taking into account the vulnerability of the various rulings to reversal on appeal. In any event, it is entirely inappropriate to place any weight on some perceived "reluctance" on the part of the EEOC to define "working" as a major life activity when it did so expressly in its regulations and then spent considerable effort to clarify the matter in its regulations and Interpretative Guidance.

For all of these reasons, reference to some perceived "circularity" in the concept of "working" as a major life activity, unnecessarily and confusingly complicates the analysis of lower courts presented with a claim that an individual is substantially limited in the major life activity of "working."

B. There is also a danger that identifying an alleged "circularity" will encourage lower courts to doubt whether "working" is a "major life activity" at all. The *amicus* brief for the Equal Employment Advisory Council ("EEAC") and the National Association of Manufacturers ("NAM") makes this argument expressly (at 13–20), relying in part on the quotation from *Sutton*. See also, *e.g.*, *Duncan* v. *Wash. Metro. Area Transit Auth.*, 240 F.3d 1110, 1117 (D.C. Cir. 2001) (en banc) (Randolph, Williams, Sentelle, JJ., concurring), *petition for cert. filed*, 69 U.S.L.W. 3763 (U.S. May 25, 2001) (No. 00-1776). Petitioner, however, has made no argument that

"working" is not a "major life activity," so the issue is not properly before the Court. In any event, the notion that "working" is not a "major life activity" makes no sense in the context of the ADA, the purposes that underlie it, and the compromises that produced it.

As an initial matter, the ADA itself directs that, except as otherwise provided in the Act,

> "nothing in this Act shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or *the regulations issued by Federal agencies pursuant to such title*." 42 U.S.C. § 12201(a) (emphasis added.)

See *Bragdon* v. *Abbott*, 524 U.S. 624, 632 (1998) (Section 12201(a) "requires us to construe the ADA to grant at least as much protection as provided by the regulations implementing the Rehabilitation Act"). Both the original § 504 regulations issued by HEW in 1977 and the coordination regulations issued by HEW in 1978 and DOJ in 1981 included "working" in the definition of "major life activities" and continue to do so.[12]

The principal argument in support of the notion that working is not a major life activity, apart from the "circularity" and "last resort" arguments discussed above, is that "[m]any individuals do not work—or do not work full time—and for a variety of reasons." Brief *Amici Curiae* of the EEAC and NAM at 20. As examples, the brief says:

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[12] 42 Fed. Reg. 22,676, 22,678 (May 4, 1977) (HEW), promulgating 45 C.F.R. § 84.3(j)(2)(ii); 43 Fed. Reg. 2132, 2137 (Jan. 13, 1978) (HEW), promulgating 45 C.F.R. § 85.31(b)(2); 46 Fed. Reg. 40,686 (Aug. 11, 1981) (DOJ), transferring and redesignating 45 C.F.R. part 85 as 28 C.F.R. part 41; see 28 C.F.R. § 41.31(b)(2). The reports on the bills that became the ADA echoed these regulations. S. Rep. No. 101-116, at 22 (1989) ("A 'major life activity' means functions such as * * * working."); H.R. Rep. No. 101-485, pt. 2, at 52 (1990) (same); *id.*, pt. 3, at 28 (1990) (same).

> "Some adults choose not to work, because they have other priorities such as caring for children, or because they are financially independent, or because they are simply not interested. Some people do not work because they are children, or because they have chosen to retire. Other individuals are unemployed involuntarily; they may want to work, but cannot find a job." *Id.*

In the first place, those who choose not to work will never be plaintiffs in ADA Title I cases, because those people will not be seeking employment or protesting a termination that they choose to accept. In any event, not much analysis is required to appreciate that for the bulk of the adult population in the country short of retirement age, working is not just a "major" life activity but the principal "life activity," when one considers the number of waking hours per week that the average American spends at work and the importance that most Americans attach to their jobs. Not only do these Americans generally have to work to support themselves and their families, but many of them want to perform productive work to contribute to the general well-being of society. Indeed, even "financially independent" people often conclude that they will not be taken seriously by those they want to influence unless they have a "real job" or that the best way to make the contributions they want to make is through formal employment.

The concurrence in *Duncan* v. *Washington Metropolitan Area Transit Authority*, *supra*, suggests a similarly artificial difficulty:

> "[S]uppose there is an economic downturn and unemployment is high. Then more people will be found to be disabled as compared with a period when the gross domestic product is growing and unemployment is low. Why? Because the less likely it is that a person can find work the more likely that he is substantially limited in the major life activity of working—that in other words he

suffers from a disability." 240 F.2d at 1118 (Randolph, Williams, Sentelle, JJ., concurring).

This passage reflects a misconception about the ADA. While individuals with disabilities, along with individuals without disabilities, may find it more difficult to find employment during an economic downturn, the EEOC regulations (and common sense) make clear that the definition of "disability" turns on "the ability to perform" a class of jobs or a broad range of jobs in various classes, not simply on the failure to obtain employment, regardless of ability. 29 C.F.R. § 1630.2(j)(3)(i), Pet. Br. 19a. Those regulations also direct a comparison "to the average person having comparable training, skills and abilities," *id.*, and an economic downturn would affect both people with disabilities and those without. Finally, other developments, both economic and technological, affect whether one's impairment substantially limits a major life activity. As better hearing aids are developed, many hard-of-hearing individuals will be less limited in hearing in general and less limited in their ability to perform jobs that require hearing. Under *Sutton*, those developments will change the number of individuals who are disabled with respect to many major life activities recognized under the ADA. There is no reason to rule out "working" as a major life activity just because its application may also be affected by such developments.

All in all, it is a serious matter in this society to have a physical or mental impairment that substantially limits one's ability to work. Title I of the ADA is intended to ensure that such a person is not discriminated against in employment when, in spite of a serious impairment, he or she can nevertheless productively join the workforce, with or without reasonable accommodation. Those protections give some assurance that such individuals will have "equality of opportunity," "full participation" in society, the ability to live independently, and a fair opportunity for "self-sufficiency." See § 12101(a)(8). Ruling or suggesting that "working" is not a "major life activity" disserves these goals and does so for no good reason.

IV. Fear That Courts or Juries May Misapply the Standards for a "Qualified Individual with a Disability" or "Reasonable Accommodation" Is No Reason To Limit the Definition of "Disability."

Because Petitioner reads the court of appeals decision as substantially broadening the category of persons who may be entitled to the protections of Title I of the ADA, it warns against the immense economic consequences of such a ruling and cautions that "truly disabled people will suffer the consequences." Pet. Br. 30. In somewhat the same vein, the Brief of the American Trucking Associations, Inc., *et al.* as *Amici Curiae* argues (at 10) that defining "disability" properly "is critically important in keeping the lid on ADA litigation," because of the "'substantial cost'" in litigating "'the issues of reasonable accommodation, business necessity, and qualification standards.'" *Id.* at 11, quoting Samuel Issacharoff & Justin Nelson, *Discrimination with a Difference: Can Employment Discrimination Law Accommodate the Americans with Disabilities Act?*, 79 N.C. L. Rev. 307, 318 (2001). That brief also argues that "'allowing cases to proceed to the reasonable accommodation inquiry pushes inexorably toward the fact-intensive case-by-case analysis' * * * that cannot easily be resolved on motion for summary judgment," and that, for these reasons, "'[t]he definition of disability is the ballgame.'" *Id.* at 10-11, quoting Issacharoff & Nelson, *supra*, at 332, 337.

These concerns are overstated. Nothing about a "fact-intensive" claim renders it inherently unsuitable for summary judgment. If the underlying facts are undisputed, or if plaintiffs' version of the facts are taken as true for the purposes of a motion for summary judgment, then summary judgment may be appropriate. In any event, there is no reason to think that determinations of "disability" are any less fact-intensive than those of "reasonable accommodation" or whether one is qualified to perform the "essential functions of the employment position" within the meaning of § 12111(8).

Furthermore, there is something illogical about using the alleged breadth and burden of certain provisions of a statute to justify a narrow reading of an earlier provision. In our view, and in the view of the EEOC, Congress intended and enacted a definition of "disability" considerably broader than the one urged by Petitioner. If, as Petitioner and its *amici* claim, the resulting burdens under Title I are inappropriately onerous—a charge *amici* dispute—that concern should be addressed to Congress, not to this Court.

CONCLUSION

For the foregoing reasons, this Court should (1) correct the error of the court of appeals in limiting the major life activity of performing manual tasks to manual tasks at work, (2) clarify the application of the major life activity of performing manual tasks as explained above, (3) clarify the passage in *Sutton* that discourages lower courts from addressing limitations on the major life activity of working, (4) reject the invitation to limit the meaning of "disability" because of the alleged burdens of addressing "reasonable accommodation" and other issues that follow a determination of "disability," and (5) affirm the judgment of the court of appeals.

Respectfully submitted,

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August 31, 2001

APPENDIX

The *Amici* Organizations

AARP is a nonprofit membership organization serving more than thirty-four million persons age 50 and older that is dedicated to addressing the needs and interests of older Americans. One of AARP's primary objectives is to strive to achieve dignity and equality in the workplace through positive attitudes, practices, and policies towards work and retirement. In pursuit of this objective, AARP has since 1985 filed more than 200 *amicus* briefs before this Court and the federal appellate and district courts. More than forty percent of AARP's members are employed, and many of those with disabilities rely on the American's with Disabilities Act to create a work place free from discrimination. The protections of the Americans with Disabilities Act are especially important to AARP members because older persons have a higher incidence of disabilities than other populations.

The American Diabetes Association ("ADA") is the nation's leading nonprofit health organization providing diabetes research, information, and advocacy. The mission of the organization is to prevent and cure diabetes, and to improve the lives of all people affected by diabetes. As part of its mission, the ADA advocates for the rights of people with diabetes and supports strong public policies and laws to protect persons with diabetes against discrimination. The ADA has over 400,000 general members and over 17,000 professional members.

The American Occupational Therapy Association ("AOTA") is the national professional association of over 40,000 occupational therapists and occupational therapy assistants as well as students of the profession. The mission is to support the contributions of occupational therapy to health, wellbeing, productivity and quality of life. Occupational therapists provide treatment and intervention for people with physical and mental disabilities to promote full participation in society and maximum

achievement of human potential. AOTA advocates on behalf of the profession and the public through support of positive public policy such as that contained in the Americans with Disabilities Act.

The Arc of the United States ("The Arc"), through its nearly 1,000 state and local chapters, is the largest national voluntary organization in the United States devoted solely to the welfare of the more than seven million children and adults with mental retardation and their families. Since its inception, The Arc has vigorously challenged attitudes and public policy, based on false stereotypes, that have authorized or encouraged segregation of people with mental retardation in virtually all areas of life. The Arc was one of the leaders in framing and supporting passage of the Americans with Disabilities Act.

The Association on Higher Education And Disability ("AHEAD") is a non-profit organization committed to full participation in higher education and equal access to all opportunities for persons with disabilities. Its membership includes approximately 2,000 institutions (including colleges, universities, not-for-profit service providers, and standardized testing organizations), professionals, and college and graduate students planning to enter the field of disability practice. Many of its members are actively engaged in assuring compliance with the Americans with Disabilities Act and in providing reasonable accommodations to both students and employees at institutions of higher education. In addition, AHEAD members actively work with students in establishing vocational plans and job readiness. AHEAD publishes numerous resources on the implementation of the Americans with Disabilities Act by postsecondary educational institutions.

The Epilepsy Foundation® is the sole national, charitable voluntary health organization dedicated to advancing the interests of the more than two million people with epilepsy and seizure disorders. The term "epilepsy" evokes stereotyped

images and fears in others that affect people with this medical condition in all aspects of life, especially employment. Since its inception, the Foundation has worked to dispel the stigma associated with seizures and has supported the development of laws, such as the Americans with Disabilities Act, that protect individuals from discrimination based on these stereotypes and fears.

HalfthePlanet Foundation is a non-profit organization that offers comprehensive, reliable information, products, and services to people with disabilities, their families and friends. The Foundation administers a well-known website—halftheplanet.com—the most comprehensive disability resource on the Web, created by people with disabilities for people whose lives are touched by disability. HalfthePlanet Foundation supports the application of technology to promote the values of the Americans with Disabilities Act—independent living, social inclusion, equality of opportunity, economic self-sufficiency, and empowerment.

The Judge David L. Bazelon Center for Mental Health Law is a national legal advocacy organization dedicated to advancing the rights and dignity of individuals with mental disabilities. The Center has litigated several cases involving employment of individuals with mental disabilities under the Americans with Disabilities Act and has an interest in ensuring that people with mental disabilities are able to continue to contribute to society and to maintain employment through changes in the work environment that allow them to successfully do their jobs.

Lambda Legal Defense and Education Fund, Inc. ("Lambda") is a national public interest legal organization dedicated to the civil rights of lesbians, gay men and people with HIV/AIDS through impact litigation, education and public policy work. Founded in 1973, Lambda is the oldest and largest legal organization addressing these concerns. Lambda has appeared as counsel or *amicus curiae* in scores of cases in state and

federal courts on behalf of people living with HIV or other disabilities, including, in part, *Albertson's, Inc.* v. *Kirkingburg*, 527 U.S. 555 (1999); *Cleveland* v. *Policy Mgmt. Sys. Corp.*, 526 U.S. 795 (1999); *Bragdon* v. *Abbott*, 524 U.S. 624 (1998); *Doe* v. *Mut. of Omaha Ins. Co.*, 179 F.3d 557 (7th Cir. 1999), *cert. denied*, 528 U.S. 1106 (2000); *School Bd. of Nassau County* v. *Arline*, 480 U.S. 273 (1987); *Chalk* v. *U.S. Dist. Ct. Cent. Dist. of Cal.*, 840 F.2d 701 (9th Cir. 1988); *Raytheon Co.* v. *Cal. Fair Emp. & Hous. Comm'n*, 212 Cal. App. 3d 1242 (1989); *McGann* v. *H&H Music Co.*, 946 F.2d 401 (5th Cir. 1991), *cert. denied*, 506 U.S. 981 (1992); *Gonzales* v. *Garner Food Services, Inc.*, 89 F.3d 1523 (11th Cir. 1996), *cert. denied*, 520 U.S. 1229 (1997); and *Mason Tenders Dist. Council Welfare Fund* v. *Donaghey*, No. 93 Civ. 1154 (JES), 1993 WL 596313 (S.D.N.Y. Nov. 19, 1993). Lambda is particularly concerned with the unique barriers confronting persons with HIV and other stigmatized disabilities whose hopes for equal opportunity in the workplace hinge on the removal of needless barriers to their abilities to work.

The National Association of Protection and Advocacy Systems ("NAPAS") is the membership organization for the nationwide system of protection and advocacy (P&A) agencies. Located in all 50 states, the District of Columbia, Puerto Rico, and the federal territories, P&As are mandated under various federal statutes to provide legal representation and related advocacy services on behalf of all persons with disabilities in a variety of settings. The P&A system comprises the nation's largest provider of legally based advocacy services for persons with disabilities. NAPAS facilitates coordination of P&A activities and provides training and technical assistance to the P&A network.

The National Association of Rights Protection and Advocacy ("NARPA") was formed in 1981 to provide support and education for advocates working in the mental health arena. It monitors developing trends in mental health law and identifies

systemic issues and alternative strategies in mental health service delivery on a national scale. Members are attorneys, people with psychiatric histories, mental health professionals and administrators, academics, and non-legal advocates—with many people in roles that overlap. Central to NARPA's mission is the promotion of those policies and strategies that represent the preferred options of people who have been diagnosed with mental disabilities. Approximately 40 percent of NARPA's members are current or former patients of the mental health system. NARPA has submitted *amicus* briefs in many cases in federal and state courts in cases affecting the lives of persons with psychiatric disabilities, including *Olmstead* v. *L. C.*, 527 U.S. 581 (1999); *University of Alabama* v. *Garrett*, 531 U.S. 356 (2001); *Godinez* v. *Moran*, 509 U.S. 389 (1993); *Washington* v. *Harper*, 494 U.S. 210 (1990); *T.D.* v. *New York State Office of Mental Health*, 91 N.Y.2d 860, 668 N.Y.S.2d 153, 690 N.E.2d 1259 (1997); *Phoebe G.* v. *Solnit*, 252 Conn. 68, 743 A.2d 606 (1999). NARPA members were key advocates for the passage of Federal legislation such as the Americans with Disabilities Act and the Protection and Advocacy for Individuals with Mental Illness Act of 1986, 42 U.S.C. §§ 10801–51.

The National Health Law Program ("NHeLP") is a public interest law firm that engages in legal and policy advocacy on behalf of low income and working poor people, people with disabilities, people of color, and children. In its work, NHeLP represents individuals who are experiencing disabling conditions affecting work and the receipt of health insurance benefits. The Program also sponsors research and writing on laws which have been enacted to benefit our client groups. As such, NHeLP has considerable interest in the outcome of this case.

Established in 1909, the National Mental Health Association, with its more than 340 affiliates, is dedicated to promoting mental health, preventing mental disorders, and achieving victory over mental illness through advocacy, education,

research and services. NMHA envisions a just, humane and healthy society in which all people are accorded respect, dignity and the opportunity to achieve their full potential free from stigma and prejudice.

The National Mental Health Consumers' Self-Help Clearinghouse is a national technical assistance center established in 1986. It is run by and for people who are consumers of mental health services and survivors of psychiatric illness (known as consumers/survivors). Its mission is to promote consumer/survivor participation in planning, providing and evaluating mental health and community support services, to provide technical assistance and information to consumers/survivors interested in developing self-help services, and advocating to make traditional services more consumer/survivor-oriented. The Clearinghouse has an interest in helping people with mental illness live to their full potential as active members of the community.

The Polio Society serves its nationwide membership with information and referral services, training in self-advocacy to enforce the civil rights of persons with disabilities, and support for legislation of benefit to polio survivors and the disability community at large. The Americans with Disabilities Act is a key element of the Polio Society's advocacy. The members are persons with disabilities as a result of polio and post-polio syndrome ("P.P.S.").

Self Help for Hard of Hearing People ("SHHH") is a nonprofit, consumer, educational organization, founded in 1979 and devoted to the welfare and interests of those who cannot hear well, their relatives and friends. SHHH has 17,000 members and 250 chapters in 50 states. It is the largest consumer organization in the United States representing people with hearing loss. As the voice for hard of hearing people, SHHH strives to improve the quality of life for hard of hearing people through education, advocacy, and self help. SHHH

influences national policy to improve the rights, services, research and public awareness of the rights and needs of people with hearing loss.